
United States
Circuit Court of Appeals

For the Ninth Circuit.

CASH COLE,

Appellant,

vs.

WALLIS GEORGE,

Appellee.

Transcript of Record

Upon Appeal from the District Court for the
Territory of Alaska, Division Number One

FILED

JUL 25 1942

PAUL P. O'BRIEN,
CLERK

NO. 10147

United States
Circuit Court of Appeals
For the Ninth Circuit.

CASH COLE,

Appellant,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court for the Territory of Alaska,
Division Number One, at Juneau

No. 4816-A

CASH COLE,

Plaintiff,

vs.

WALLIS GEORGE,

Defendant.

AMENDED COMPLAINT

The plaintiff complains of the defendant and for cause of action alleges.

I.

That during all the times herein mentioned The Baranof Hotel Inc., was and still is a corporation duly organized and existing under and by virtue of the laws of the Territory of Alaska, for the purpose of carrying on and conducting a hotel business.

II.

That during all the times herein mentioned said corporation had its principal office for the transaction of business in the City of Juneau, Alaska.

III.

That the plaintiff was during all the times herein mentioned, and still is, a stockholder of, and in, said corporation; and that the defendant knew that plaintiff was a stockholder in said Baranof Corporation.

IV.

That during said year of 1940, aforesaid, the said corporation was engaged in its said business of conducting a hotel, and during said year did employ large numbers of employees in the carrying on and furtherance of said business, and did during said year incur certain liabilities, and received and disbursed divers sums of money. [1*]

V.

That the defendant, Wallis George, was during the whole of the year 1940, and still is, the secretary and treasurer of the Baranof Hotel, Inc., a corporation incorporated under and by virtue of the laws of Alaska.

VI.

That Section 923 of the Compiled Laws of Alaska of 1933 as amended by Section 923 of the Session Laws of Alaska of 1935, provides that every corporation formed by virtue of the laws of Alaska, shall annually, within sixty days from the first day of January of each year, file with the Auditor of the Territory of Alaska and with the clerk of the District Court in each Division, wherein business of the corporation is conducted, a report made and verified by the president and the treasurer and shall keep a copy of said report at its main office for inspection of stockholders which shall state:

*Page numbering appearing at foot of page of original certified Transcript of Record.

1. The amount of its capital stock and the amount actually issued.
2. The amount of its debts.
3. The amount of its assets.
4. The names and addresses of all the directors and officers of the corporation.

That any corporation organized under the laws of the Territory of Alaska whose fiscal year ends at any other time than the end of the calendar year, shall be allowed sixty days from the date on which its fiscal year ends within which to file said report.

That if any report be not made and filed as prescribed in this section, either of such officers who shall thereafter refuse or neglect to make and file such reports within 10 days after written request to do so shall have been made by a creditor or a stockholder of the corporation, shall be under a penalty of \$50.00 recoverable by such aggrieved creditor or stockholder, for every day he or they shall so neglect or refuse. [2]

VII.

That the fiscal year of said Baranof Hotel Corporation ends on the 31st day of March of each year; that it was the duty of the said Baranof Hotel Corporation, Inc., to make and file said report at a date not later than June 1st, 1940; that said corporation neglected to make and file a report, made and verified by its president and treasurer, within

the time provided by the statute, to-wit, within sixty days from March 31, 1940.

That following said corporations failure to file said report, a written request was made upon the treasurer of said corporation, Wallis George, to make and file a report as provided by statute 923 of the Session Laws of Alaska of 1935.

That said treasurer, Wallis George, neglected and failed and refuses to file said annual report, as provided by statute.

VIII.

That on the 17th day of November, 1941, this plaintiff, as a stockholder, made a written request of the defendant, Wallis George, treasurer of said corporation, that such duty be performed, to-wit, file said annual report, as required by law, of the said Baranof Hotel Corporation; that said defendant, Wallis George, as hereinbefore alleged, failed, refused and neglected to make or cause to be made said annual report and file the same with the Auditor of the Territory of Alaska and the clerk of the District Court for the first division; that at the date of the filing of the first complaint on behalf of the plaintiff, sixty-three (63) days had expired since plaintiff, Cash Cole made said written request herein above referred to, to-wit from the 17th day of November, 1941 to January 19th, 1942.

IX.

That by reason of the premises the defendant for-

feited and became indebted to the plaintiff in the sum of Thirty-one [3] Hundred and Fifty (\$3,150.00) Dollars, whereby an action accrued to this plaintiff in accordance with section 923 of the Session Laws of Alaska of 1935.

X.

That the amount which the defendant will forfeit and become indebted to this plaintiff by his continuing neglect to file said verified report is not now possible to ascertain.

Wherefore, plaintiff prays judgment against the defendant for the sum of \$3,150.00 for costs of suit, and for such other and further relief as to the court may seem proper; plaintiff also prays for the right to file a supplemental and amended complaint at the time of the trial of this action to include further amounts that the said defendant may forfeit and become indebted to this plaintiff in accordance with section 923 of the Session Laws of Alaska of the year of 1935.

HAROLD H. BATES

Attorney for Plaintiff.

(Duly verified.)

Service accepted and copy received this 28th day of March, 1942.

HOWARD D. STABLER,

Attorney for Defendant.

[Endorsed]: Filed March 28, 1942. [4]

[Title of District Court and Cause.]

DEMURRER

Comes now the above named defendant, by Howard D. Stabler his attorney, and demurs to the plaintiff's amended complaint on the ground and for the reason that:

1. There is a defect in non-joinder of necessary party defendants; and
2. The amended complaint fails to state facts sufficient to constitute a cause of action against the defendant Wallis George.

Dated: Juneau, Alaska, April 3rd, 1942.

HOWARD D. STABLER

Defendant's Attorney.

Copy Received 4/4/42. Harold H. Bates.

[Endorsed]: Filed April 4, 1942. [5]

[Title of District Court and Cause.]

ORDER SUSTAINING DEMURRER TO
PLAINTIFF'S AMENDED COMPLAINT

On April 4th, 1942, this matter came before the court on the defendant's demurrer to the plaintiff's amended complaint; attorney Howard D. Stabler appearing for the defendant, and attorney Harold H. Bates appearing for the plaintiff. Argument was had, and the matter was submitted to the court for decision,—

Now, therefore, the law and the premises being fully understood and considered by the court, it is Ordered that the defendant's demurrer be, and same hereby is, sustained on the second ground; denied first ground. Exception allowed to the plaintiff and defendant. April 8, 1942.

GEO. F. ALEXANDER

District Judge.

O.K. H. Bates.

[Endorsed]: Filed and Entered Apr. 8, 1942. [6]

[Title of District Court and Cause.]

OPINION

The plaintiff in this case seeks to recover from the defendant as treasurer of the Baranof Hotel, Inc., an Alaska Corporation, the penalty provided by Section 923, C.L.A. as amended by Chapter 89, Session Laws of Alaska, 1935, for failure to make and file the annual report of such corporation as required by law.

The defendant has demurred to plaintiff's complaint on two grounds, viz:

First: That there is a defect in non-joinder of necessary parties defendant;

Second: That the complaint does not state facts sufficient to constitute a cause of action against the defendant Wallis George.

The complaint *state* in substance that the Baranof

Hotel, Inc. is a corporation organized and existing under and by virtue of the laws of the Territory of Alaska, having its principal place of business at Juneau, Alaska. That the plaintiff is a stockholder of said corporation. That the defendant, Wallis George, is the secretary and treasurer of said corporation. That under Sec. 923, C.L.A. as amended by Chapter 89, Session Laws of Alaska, 1935, it became and was the duty of the defendant Wallis George, as treasurer of said corporation, to file with the Auditor of the Territory of Alaska and with the Clerk of the District Court in the First Division, the annual report of [7] said Baranof Hotel, Inc., made and verified by its president and treasurer, stating the amount of its capital stock and the amount actually issued; the amount of its debts; the amount of its assets, the name and address of all the directors and officers of the corporation, within sixty days from the date of its fiscal year ends. That the defendant has failed and neglected to file such report, after a written request was made on him so to do by the plaintiff as a stockholder of said corporation, as a result of which defendant became liable to the plaintiff for the penalty provided by said section.

Sec. 923 of the statute requires,—

“Every corporation formed under this article shall annually, within sixty days from the first day of January of each year, file with the Auditor of the Territory of Alaska and with the Clerk of the District Court in each division

wherein business of the corporation is conducted, a report made and verified by the president and treasurer.”

The statute then provides:

“If any report be not made and filed as prescribed in this section (923), either of such officers who shall thereafter refuse, or neglect to make and file such report within ten days after a written request to do so shall have been made by a creditor or a stockholder of the corporation, shall be under penalty of Fifty Dollars, recoverable by such aggrieved creditor or stockholder, for every day he or they shall so neglect or refuse.”

It is thus made the duty of the corporation itself, in the first instance, to make and file an annual report, made and verified by its “president and treasurer” within sixty days from the first day of January of each year, or within sixty days from the date on which its fiscal year ends. If it fails to do so any stockholder or creditor may make a demand upon the president and treasurer to file such report, and if they fail to make and file such verified report within ten days after a written request to do so, the statute makes them liable to any aggrieved creditor or stockholder for a penalty of Fifty Dollars per day, [8] for every day he or they shall neglect or refuse to make and file such report.

It will be noted that the statute makes it the joint duty of the “president and treasurer” of such cor-

porations to file such report (after a written request therefor, and the filing of a report by any other officers of the corporation, or by the president or treasurer alone, would not be a compliance with the statute.

(*McCrea vs Bedell*, 29 N.Y. Sup. 705; *St. John vs Eberlin*, 51 N.Y. Sup. 998-999)

The complaint therefore should allege in substance;

First: That the corporation itself failed to file the required annual report within the time provided by statute;

Second: That following the corporation's failure so to do, a written request was made upon both the president and treasurer of the corporation to make and file such report, by a creditor or stockholder of the corporation;

Third: The refusal or neglect of such officers to file such report within ten days after written request so to do.

The weakness of plaintiff's complaint lies in the fact that although a joint and several liability is created against the president and treasurer of the corporation for failure to file such annual report after a written request is made of them so to do, the law makes it their joint duty to file such report, and therefore before recovery can be had under the statute against either the president or treasurer of such corporation a demand must be made upon both

the president and treasurer of such corporation to file such report, and then if they fail to do so within the time prescribed by the statute, either or both the president and treasurer are liable for their failure so to do. [9]

In this case the complaint states that demand was made upon the treasurer only. Such a demand, we think, is insufficient, for the reason that even had the treasurer furnished or filed a report made and verified by himself only, it would not be a compliance with the statute, which requires a report signed and verified by both the president and treasurer.

We therefore hold that the first ground of defendant's demurrer to plaintiff's complaint, viz. that there is a defect in non-joinder of necessary parties defendant, is untenable for the reason that the statute in question creates a joint and several liability as against both the president and treasurer of the corporation for violation of the statute; and

That the second ground of demurrer, viz. that the complaint does not state facts sufficient to constitute a cause of action against the defendant, Wallis George, is good, as the statute requires a written request to be made upon both the president and treasurer, before any cause of action accrues for the penalty prescribed by the statute.

The defendant also urges that the statute gives a right of action only to an "aggrieved creditor or stockholder." There is, however, no merit to this contention. An aggrieved creditor or stockholder, as

contemplated by our statute, has generally been held to be anyone who has a right to demand the filing of such a report, and a "stockholder" has been almost universally held to be such an aggrieved person. (See "Aggrieved" and "Aggrieved Creditor and Stockholder" in *Words & Phrases*, Perm. Ed.)

Nor do I consider there is any merit to defendant's contention that "the penalty exacted by the statute is arbitrary, unreasonable, excessive, discriminatory and amounts to a confiscation of defendant's property without due process of law." [10]

The true rule, as applied to cases of this kind is laid down by Mr. Justice Story in *People vs Quant*, 12 Howard Practice at page 91, wherein he says:

"We are undoubtedly bound to construe penalty statutes strictly and not to extend them beyond their obvious meaning by strained inferences. On the other hand we are bound to interpret them according to the manifest import of the words and to hold all cases which are within the words and the mischiefs, to be within the remedial influence of the statute.

When a statute, as this one does, imposes a specific obligation upon a corporation official, the courts cannot alter or lessen the penal consequences of default; for that is a matter of legislative wisdom and not judicial concern and policy. There is an apparent disposition to avoid cumulative penalties wherever the statute is capable of an interpretation that permits the

courts to hold but one penalty recoverable, but this course can not be indulged when the act invoked gives a separate and distinct penalty for every offense, or for every day's delay, as is the case here."

(Suydam vs Smith 52 N.Y. Sup. 983; St. John vs Eberlin, 51 N.Y. Sup. 998-1000)

"The defendant had the power to stop the running of penalties by complying with the statute, which in plain language provides that until he does yield compliance the penalties are to accumulate. True, the plaintiff might have brought his suit sooner and thereby put a limit to the amount of his recovery, but there seems to be nothing which requires a plaintiff pursuing a statutory remedy for his protection to consult the interests of the wrongdoer whose violation furnishes the very grievance sought to be redressed. The plaintiff by force of the statute, is entitled to recover, not only the penalty of Fifty Dollars for failure to furnish the required statement, but the further sum of ten dollars for every day's neglect to furnish the same, up to the time of the commencement of the action, aggregating \$1750.00. Judgment on the special verdict is therefore rendered for this amount, with costs.

(St. John vs Eberlin, 51 N.Y. Supp. 998-1000)

We therefore hold that the complaint in this case does not state a good cause of action against the defendant Wallis George, under our statute, although if the plaintiff had made a demand upon both the president and treasurer of said corporation, either or both of them would have been [11] liable for their failure to comply with such request.

The first ground of defendant's demurrer is therefore denied, and the second ground of demurrer sustained. An order may be prepared in compliance with this opinion, and it is so ordered.

Dated at Juneau, March 16, 1942.

GEO. F. ALEXANDER
Judge.

[Endorsed]: Filed Mar. 21, 1942. [12]

In the District Court for the Territory of Alaska,
Division Number One, at Juneau.

No. 4816—A.

CASH COLE,

Plaintiff,

vs.

WALLIS GEORGE,

Defendant.

FINAL JUDGMENT

This cause having heretofore come regularly on for hearing upon the defendant's demurrer to the

plaintiff's amended complaint, and argument having been had by counsel for the respective parties, and the court thereupon having sustained said demurrer on the second ground therein set forth, to-wit, the failure of the amended complaint to state facts sufficient to constitute a cause of action against the defendant, Wallis George, and having on the 8th day of April, 1942, made and entered its order herein sustaining said demurrer and the plaintiff, by his attorney of record, now announcing in open court that he stands upon his amended complaint and refuses to plead herein & plaintiff requests that judgment be entered herein, and the court being fully advised in the premises;

Now, therefore, it is hereby ordered, adjudged and decreed, that these proceedings and the plaintiff's amended complaint be and the same are hereby dismissed and that the plaintiff take nothing hereby, to all of which the plaintiff excepts and his exception is hereby allowed.

Dated this 8th day of April, 1942.

GEO. F. ALEXANDER

District Judge.

OK as to form.

HAROLD H. BATES

Atty. for Plaintiff.

HOWARD D. STABLER

Atty. for Defendant.

[Endorsed]: Filed and Entered April 9, 1942. [13]

[Title of District Court and Cause.]

PETITION FOR APPEAL

Comes now Cash Cole, the above named Appellant (Plaintiff) and complains that in the records and proceedings had in this court in this cause and also in the rendition of the Final Judgment against him on the 9th day of April, 1942, whereby this court rendered final judgment upon appellant's (plaintiff's) refusal to further plead herein, in favor of Appellee (defendant), Wallis George, and against Appellant (plaintiff), Cash Cole, and finally dismissed appellant's (plaintiff's) amended complaint and claim for a statutory penalty for the refusal or neglect of the appellee (defendant), Wallis George, as Treasurer of the Baranof Hotel, Inc., to file the annual report of the said Baranof Hotel, Inc., a corporation, for the year of 1940, after written request to do so had been made by the appellant, (plaintiff), as provided by the laws of the Territory of Alaska, and decreed that the appellant (plaintiff) should take nothing by these proceedings, manifest error has happened to his damage as will more fully appear from the assignments of error filed herewith, and respectfully appeals to the United States Circuit Court of Appeals for the Ninth Circuit for such further orders and processes as may cause the said errors to be corrected, and respectfully prays that this, his appeal may be allowed and that a citation may issue upon said appeal and that a transcript of

the record herein may be sent to the said Honorable [14] Circuit Court of Appeals at San Francisco, California, and that an order may be entered herein fixing the amount of the bond, as a cost bond, to be given by him; and your petitioner will ever pray.

HAROLD H. BATES

Attorney for Appellant.

Copy of the foregoing petition received this 11th day of April, 1942.

HOWARD D. STABLER

Attorney for Appellee.

[Endorsed]: Filed Apr. 11, 1942. [15]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

The foregoing petition of the above named appellant, praying for an order allowing an appeal from the judgment of the said above entitled court to the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California.

Now, therefore, it is hereby ordered that said appeal be and the same is hereby allowed, and that citation may issue upon said appeal for the transcript of the records to be sent to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California; that the amount of the bond to be given by the petitioner as a cost bond is

hereby fixed at Two Hundred Fifty (\$250.00) Dollars.

Done in open court this 11th day of April, 1942.

GEO. F. ALEXANDER,

District Judge.

Copy of the foregoing order allowing appeal received this 11th day of April, 1942.

HOWARD D. STABLER,

Attorney for Appellee.

[Endorsed]: Filed and Entered April 22, 1942.

[16]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now the appellant (plaintiff), Cash Cole, and respectfully assigns, in connection with his petition for appeal herein, the following errors committed in the proceedings and in the trial of the above-entitled cause, which he intends to urge upon the hearing of the appeal herein, and upon which he relies to reverse the judgment entered herein on April 9th, 1942, in favor of Appellee (defendant) and against appellant (plaintiff), whereby appellant's (plaintiff's) amended complaint and these proceedings were dismissed and the appellant (plaintiff) decreed to take nothing by said proceedings:

I.

The court erred in sustaining the second point of

defendant's (appellee's) demurrer to plaintiff's (appellant's) amended complaint, to-wit, in holding that said amended complaint does not state facts sufficient to constitute a cause of action against defendant (appellee), to which ruling plaintiff (appellant) excepted and which exception was duly allowed.

II.

The court erred in making and entering herein its certain judgment, dated April 9th, 1942, in favor of the Appellee (defendant) and against the Appellant (plaintiff) and in finally dismissing appellant's (plaintiff's) amended [17] complaint, to which ruling appellant (plaintiff) duly excepted and his exception was allowed.

Wherefore, the appellant (plaintiff) prays that the judgment above referred to may be reversed.

HAROLD H. BATES,

Attorney for Appellant.

Copy of the foregoing assignment of errors received this 11th day of April, 1942.

HOWARD D. STABLER,

Attorney for Appellee.

[Endorsed]: Filed April 11, 1942. [18]

[Title of Court and Cause.]

COST BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS:

That we, Cash Cole, as Principal and United

States, Fidelity and Guaranty Company, a corporation, as Surety, hereby acknowledge ourselves to be indebted and firmly bound to pay to Wallis George, the sum of Two Hundred Fifty and No/100— (\$250.00) Dollars, in good and lawful money of the United States of America, for the payment of which sum, well and truly to be made, we hereby bind ourselves, our and each of our heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 11th day of April, 1942.

The condition of this obligation is such that whereas the above bounden Cash Cole has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment rendered and entered in this cause on April 11, 1942, wherein and whereby it is finally ordered, adjudged and decreed that plaintiff's amended complaint be dismissed and that the plaintiff take nothing by these proceedings.

Now, therefore, if the said Cash Cole shall prosecute his said appeal to effect and shall answer for and pay all costs as may be awarded against him, if he fails to make his plea good, then this obligation shall be null and void; otherwise to remain in full force and effect.

CASH COLE,
Principal.

[19]

UNITED STATES FIDELITY AND GUAR-
ANTY COMPANY, a corporation.

(Seal) By: M. E. MONAGLE,

Its attorney-in-fact and Agent. Surety.

United States of America,

Territory of Alaska.—ss.

Acknowledged before me this 11th day of April,
1942.

[Seal]

HAROLD H. BATES,

Notary Public for Alaska.

My Commission expires Feb. 14, 1945.

ORDER

Now, on this day, it is hereby ordered that the fore-
going bond on appeal be and it is hereby approved
as to sum and sufficiency of surety.

Done in Open Court this 22nd day of April, 1942.

GEO. F. ALEXANDER,

District Judge.

Copy received this 11th day of April, 1942.

HOWARD D. STABLER,

Attorney for Defendant.

[Endorsed]: Filed April 22, 1942. [20]

[Title of Court and Cause.]

CITATION ON APPEAL

United States of America,

Territory of Alaska.—ss.

THE PRESIDENT OF THE UNITED STATES,

To the Appellee (Defendant), Wallis George, and
his attorney, Howard Stabler, Greetings:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, in the state of California, within thirty days from the date of this citation pursuant to an order heretofore duly made and entered herein on April 11, 1942, by the District Court for the Territory of Alaska, Division Number One, in this cause, wherein you, said Wallis George, are defendant and appellee, and Cash Cole is plaintiff and appellant, allowing the latter's said appeal to said Honorable Circuit Court of Appeals from that certain judgment hereinafter mentioned, and then and there show cause, if any there be, why that certain judgment heretofore entered herein on April 9th, 1942, in favor of Appellee (Defendant), Wallis George, and against Appellant (Plaintiff) Cash Cole, and finally dismissing said plaintiff's (Appellant's) amended complaint and said proceedings in said District Court, should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Harlan Fiske Stone, Chief Justice of the Supreme Court of the United States this 11th day of April, 1942.

GEO. F. ALEXANDER,
District Judge.

Copy of the foregoing citation received this 11th day of April, 1942.

HOWARD D. STABLER,
Attorney for Appellee.

[Endorsed]: Filed and Entered April 22, 1942.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated and agreed that the title of the court and the cause be *ommitted* by the Clerk of the above-entitled court from the transcript of the record in the above-entitled cause.

HAROLD H. BATES,

Attorney for Appellant.

HOWARD D. STABLER,

Attorney for Appellee.

[Endorsed:] Filed April 22, 1942. [22]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the District Court, Juneau, Alaska:

Please prepare a transcript of record in the above-entitled cause, including therein the following papers, to-wit:

1. Plaintiff's (Appellant's) amended complaint filed March 28, 1942.

2. Defendant's (Appellee's) demurrer to plaintiff's (Appellant's) amended complaint.

3. Order sustaining point two (2) of defendant's (appellee's) demurrer to plaintiff's (appellant's) amended complaint.

4. Court's written opinion on demurrer.

5. Final Judgment filed April 9th, 1942.

6. Petition for Appeal.
- 6 (a). Order allowing Appeal.
7. Assignments of error.
8. Cost bond, with order approving it.
9. Original Citation.
10. Stipulation of Attorneys for printing of record.
11. This Praeceptum.

Kindly prepare said transcript and forward it in accordance with said rules of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California.

HAROLD H. BATES,
Attorney for Appellant.

Copy received this 11th day of April, 1942.

HOWARD D. STABLER,
Attorney for Appellee.

[Endorsed]: Filed April 22, 1942. [23]

[Title of Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Territory of Alaska,
First Division.—ss.

I, Robert E. Coughlin, clerk of the district court for the territory of Alaska, First Division, hereby certify that the foregoing and hereto attached 24 pages of typewritten matter, numbered from 1 to 24, both inclusive, constitute a full, true and complete copy, and the whole thereof, of the record pre-

pared in accordance with the praecipe of the Plaintiff-appellant on file herein and made a part hereof, in cause No. 4816-A, wherein Cash Cole is Plaintiff-appellant and Wallis George is Defendant-appellee, as the same appears of record and on file in my office, and that said record is by virtue of a Petition for Appeal and Citation issued in this cause and the return thereof in accordance therewith.

And I do further certify that this transcript was prepared by me in my office, and that the cost or preparation, examination and certificate, amounting to Ten and 40/100 (\$10.40) has been paid to me by Plaintiff-appellant.

In witness Whereof, I have hereunto set my hand and caused the seal of the above entitled Court to be affixed this 22nd day of May, 1942.

ROBERT E. COUGHLIN,
Clerk.

By: J. W. Leivers, Deputy. [24]

[Endorsed]: No. 10147. United States Circuit Court of Appeals for the Ninth Circuit. Cash Cole, Appellant, vs. Wallis George, Appellee. Transcript of Record. Upon Appeal from the District Court for the Territory of Alaska. Division Number One. Filed May 25, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
Ninth Circuit at San Francisco

Docket No. 10147

CASH COLE,

Appellant,

--versus--

WALLIS GEORGE,

Appellee.

STATEMENT OF POINTS ON APPEAL

To the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and Howard Stabler, Attorney for the Appellee. Please be advised that the appellant adopts all the assignments of error appearing in the transcript of the record as his points on appeal.

HAROLD H. BATES,
Attorney for Appellant.

Due service admitted this 19 day of June, 1942.

HOWARD D. STABLER,

By: G. S.

Attorney for Appellee.

[Endorsed]: Filed June 29, 1942, Paul P. O'Brien,
Clerk.

